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STATE OF CALIFORNIA

Fish and Game Commission

September 27, 2011

This is to provide you with a copy of the notice of proposed regulatory action relative to Section 7.00 and subsection (b)(68) of Section 7.50, Title 14, California Code of Regulations, relating to Oroville-Thermalito Complex Regulations for take of Non-Indigenous Coho Salmon, which will be published in the California Regulatory Notice Register on September 30, 2011.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Mr. Scott Barrow, Fisheries Branch, Department of Fish and Game, phone (916) 445-7600 has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,


Sheri Tiemann
Staff Services Analyst

Attachment

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220 and 240 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205 and 206 of said Code, proposes to amend Section 7.00 and subsection (b)(68) of Section 7.50, Title 14, California Code of Regulations, relating to Oroville-Thermalito Complex Regulations For Take of Non-Indigenous Coho Salmon.

Informative Digest/Policy Statement Overview

The Department of Fish and Game (Department) is proposing an amendment to the General District sport fishing regulations for the Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River between the Diversion Pool Dam and Fish Barrier Dam. This proposal would expand the take of non-indigenous Coho salmon, which are currently limited to Lake Oroville proper, to include the Oroville-Thermalito Complex and the Feather River between the Diversion Pool Dam and Fish Barrier Dam.

Current Valley District regulations allow take of non-indigenous Coho salmon only in Lake Oroville. Bag and possession limits for the Oroville-Thermalito Complex and the Feather River between the Diversion Pool Dam and Fish Barrier Dam are already under the current Valley District regulations and would not require any special fishing regulations for these waters.

The Department and Department of Water Resources (DWR) have been working cooperatively to develop a successful cold water fishery in Lake Oroville. This is based, in part, on a requirement in DWR's FERC license of the Oroville Hydroelectric facility to provide a cold water fishery. DWR and the Department began stocking on an experimental basis hatchery raised non-indigenous Coho salmon into Lake Oroville in 2002. Based on the success of the non-indigenous Coho salmon fishery in Lake Oroville and the Lake Oroville Coho Salmon Stocking Risk Assessment (DWR, 2004) the Department approved stocking of hatchery raised non-indigenous Coho salmon into Lake Oroville with the stipulation that all stocked Coho be marked with an adipose fin clip and a coded wire tag.

There has been growing evidence over the last few years that planted non-indigenous Coho salmon are escaping from Lake Oroville. Recent boat based electrofishing surveys conducted in the Oroville-Thermalito Complex showed highest concentration of non-indigenous Coho salmon closest to Lake Oroville Dam. Escapement appears to be greatest during wet years though some escapement seems to happen in all years. This proposal would allow harvest by the existing popular Oroville-Thermalito Complex fishery of non-indigenous Coho salmon that escape Lake Oroville.

Concern has been raised over the potential impact that escaped non-indigenous Coho salmon could have on native salmonids in either the anadromous waters of the Feather River or in other streams and rivers with runs of native Coho salmon. Of particular concern is the potential for interbreeding with native Coho salmon stocks. Although the likelihood of the planted fish out-migrating, surviving predation and ocean fisheries, straying, and successfully spawning is extremely low, the current status of native stocks makes this a real concern. In response the Department is now requiring all non-indigenous Coho salmon planted in Lake Oroville to be triploid (sterile). In 2011, the Department approved the first experimental plant of 18,000 triploid non-indigenous Coho salmon into Lake Oroville.

Planting triploid non-indigenous Coho salmon will alleviate the potential for interbreeding in future years and this proposed regulation amendment will help continue the non-indigenous Coho salmon fishery in the Oroville-Thermalito Complex. As data show the non-indigenous Coho salmon density rapidly decreasing with distance from the dam, and a vast majority the flow from Lake Oroville goes through the Oroville-Thermalito Complex, this proposed regulation amendment targets escaped non-indigenous Coho salmon where they are most likely to be encountered. Due to extremely low numbers, a non-indigenous Coho salmon fishery is not warranted in the anadromous reaches of the Feather River and these fish are not anticipated to impact native fishes either through competition or predation.

Current Regulations

Section 7.00, CCR, Title 14, allows the take of non-indigenous Coho salmon in only Lake Oroville under the General District bag and possession limit of 5 fish for the Valley District.

Proposed Regulations

Section 7.00, CCR, Title 14, will be revised to expand the take of non-indigenous Coho salmon to the Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River between the Diversion Pool Dam and Fish Barrier Dam. The current General District bag and possession limit of 5 fish for the Valley District will remain in place.

This change will allow for take of non-indigenous Coho salmon to reduce the possible threat to the anadromous waters of the Feather River over the near term until the diploid stocks already in the lake are depleted, and will provide for increased opportunity for the public over the long term if and when some triploid fish escape in the future.

Subsection (b)(68) of Section 7.50, CCR, Title 14, will be revised to clarify current enforcement practices and public understanding that all non-anadromous waters of the Oroville-Thermalito Complex and areas of the Feather River above the Fish Barrier Dam are subject to the General District regulations for the Valley District.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the Beach Resort Monterey, 2600 Sand Dunes Drive, Monterey, California, on Thursday, October 20, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all actions relevant to this action at a hearing to be held at the Veteran's Memorial Building, 112 West Cabrillo Boulevard, Santa Barbara, California, on Thursday, November 17, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 10, 2011, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 14, 2011. All comments must be received no later than November 17, 2011, at the hearing in Santa Barbara, CA.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth

Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Scott Barrow, Fisheries Branch, phone (916) 445-7600, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes will offer more fishing opportunities with no adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: September 20, 2011

Jon K. Fischer
Deputy Executive Director